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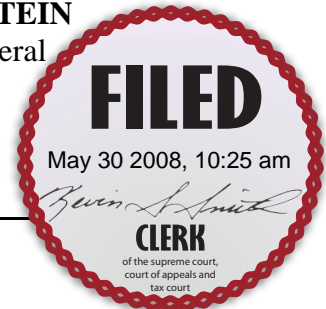
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**IN THE  
COURT OF APPEALS OF INDIANA**

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TONY E. FIELDS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A04-0709-CR-509

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APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Robert Altice, Judge  
Cause No. 49G02-0612-MR-233297

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**May 30, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

Tony E. Fields appeals his murder conviction, claiming that the trial court committed fundamental error in admitting a witness's prior inconsistent statement. We affirm.

The facts most favorable to the jury's verdict indicate that early in the evening of December 5, 2006, Cherron Coleman met her intermittent boyfriend, Charles "Shorty" Vaden, in the 2300 block of North Sheldon in Indianapolis. The two argued, and Coleman drove off in Vaden's car. Vaden then exchanged words with Fields's brother, Terrance, who was standing outside his house at 2350 North Sheldon. Terrance went inside his house with his girlfriend Samantha Muhammad and began cursing. Fields, who was also in the house, overheard Terrance cursing and grabbed a 7.62-millimeter semiautomatic assault rifle. Fields went outside, followed by Terrance and Muhammad. Fields fired several shots at Vaden, who ran southward and disappeared behind a tree.

Coleman heard the gunshots and returned to Terrance's house. She saw Fields standing on the sidewalk with the rifle in his hands and asked him why he had fired the shots. Fields responded, "Because don't nobody come down here talking about fuck you, fuck you." Tr. at 225.<sup>1</sup> Fields went back inside and wiped off the rifle with a cloth. Coleman went to look for Vaden and found him lying mortally wounded on the sidewalk south of Terrance's house. One bullet had passed through his left hand, and another had passed through his abdomen. These wounds, the second of which was fatal, were consistent with those caused by a 7.62-millimeter bullet. In front of Terrance's house, police found two

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<sup>1</sup> At trial, Coleman testified that she asked Fields, "[W]hat was going on, who are you shooting at," and that Terrance replied, "Shorty." Tr. at 224. The trial court sustained Fields's objection to this testimony on hearsay grounds, but Fields did not move to strike the objectionable testimony.

7.62-millimeter shell casings that had been fired from a loaded assault rifle that was recovered from a truck on the property.

Later that evening, Coleman identified Fields in a photo array as the person she had seen carrying the rifle. Muhammad initially told police that she had not seen anything but ultimately admitted that Fields had fired a rifle at a man who was running down the street. Early on the morning of December 6, Detective Kevin Duley tape-recorded an interview with Terrance, who stated that Fields had fired the assault rifle at Vaden.

On December 8, 2006, the State charged Fields with murder. At trial, Fields called Terrance as a witness. Terrance testified that the truck in which the assault rifle was found was always locked and that Muhammad had lied about Fields being the gunman in retaliation for Terrance's nonpayment of a \$200 cell phone bill. Terrance also testified that he did not see Fields outside that day and that he heard gunshots from the south and ran.

On cross-examination, the State asked Terrance if he had given a tape-recorded statement to police on the night of the shooting. Terrance admitted that he had. The State then asked, "And did you say any of [the] same things that night about what happened?" *Id.* at 450. Without divulging the substance of his statement, Terrance claimed that the police had intimidated him and threatened to charge him with murder and take away his son to coerce him into saying what they wanted him to say. Terrance also claimed that "they kept turning the tape off." *Id.* Terrance asserted that Detective Duley had told him to say that the truck in which the murder weapon was found was unlocked and that Fields "went in the truck[.]" *Id.* at 456.

The State called Detective Duley as a rebuttal witness and sought to introduce Terrance's tape-recorded interview as a prior inconsistent statement for the purpose of impeaching Terrance and rebutting his claims of intimidation and coercion. Fields objected on the grounds that the statement was outside the scope of direct- and cross-examination and was immaterial, irrelevant, and cumulative.<sup>2</sup> The trial court overruled the objection and stated that it would admit the statement for impeachment purposes, although it did not so admonish the jury. The jury listened to the tape recording and reviewed a transcript of the recording that was admitted as a demonstrative exhibit over Fields's objection. In closing argument, the State told the jury that the court would instruct it that Terrance's statement "is not substantive evidence" and that "[t]he reason it was being offered and the reason that you should consider it, is to evaluate Terrance's credibility." *Id.* at 586, 587. The trial court did not so instruct the jury. On July 10, 2007, the jury found Fields guilty as charged.

On appeal, Fields makes the following argument:

It does not appear that Mr. Fields objected to the admission of the tape for the reason that its probative value was substantially outweighed by the danger of unfair prejudice, Ind. Evidence Rule 403. Nor did he request that a limiting instruction be given. However, in this case, the admission of such evidence .... was fundamental error.

Appellant's Br. at 12.

We disagree. "The 'fundamental error' rule is extremely narrow and applies only when the error constitutes a blatant violation of basic principles, the harm or potential for

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<sup>2</sup> On appeal, Fields claims that he "argued that there was no proper foundation for the procedure." Appellant's Br. at 12 (citing Tr. at 552). This argument did not pertain to the foundation for Terrance's prior inconsistent statement, but rather to the foundation for the transcript of the tape recording, which was admitted as a demonstrative exhibit. *See* Tr. at 552 ("[T]here's been no proper foundation for this entire

harm is substantial, and the resulting error denies the defendant fundamental due process.” *Burnside v. State*, 858 N.E.2d 232, 241 (Ind. Ct. App. 2006). Fields has failed to show that the admission of Terrance’s statement was error, let alone fundamental error. Fields does not even mention Indiana Evidence Rule 613, which governs the admissibility of prior inconsistent statements, or cite any cases regarding the proper procedures for offering and admitting such statements, and thus he has waived any argument in this regard. *See* Ind. Appellate Rule 46(A)(8) (“The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on ....”); *see also Davis v. State*, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005) (finding appellant’s argument waived for failure to provide adequate citation to authority), *trans. denied* (2006).

Even assuming, as Fields contends, that the trial court erred in admitting Terrance’s tape-recorded statement, we conclude that the error was harmless. Cherron Coleman identified the 7.62-millimeter assault rifle recovered from the truck on Terrance’s property as the firearm that she saw in Fields’s possession moments after she heard gunshots. When she asked Fields why she had fired the shots, he replied, “Because don’t nobody come down here talking about fuck you, fuck you.” Tr. at 225. Minutes later, Coleman found Vaden lying mortally wounded on the sidewalk down the street from Terrance’s house. Vaden’s wounds

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procedure as far as I’m concerned that - - where it was taken, why it was taken, by whom it was taken, on what condition it was taken.”).

were consistent with those caused by 7.62-millimeter bullets, and police found two 7.62-millimeter shell casings on the ground outside Terrance's house.

Samantha Muhammad saw Terrance exchange words with a man outside his house. She followed Terrance inside, where Fields overheard him cursing and grabbed a gun. Muhammad returned outside with Fields, who fired the gun at a man who ran down the street and disappeared behind a tree. Afterward, Muhammad and Fields went back inside Terrance's house, and Fields wiped off the gun with a cloth, presumably to erase any fingerprints. This evidence supporting the jury's verdict is sufficient to convince us that the admission of Terrance's tape-recorded statement did not affect Fields's substantial rights. Accordingly, we affirm his murder conviction.

Affirmed.

BARNES, J., and BRADFORD, J., concur.